

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>UNITED STATES OF AMERICA</b>	:	<b>CRIMINAL NO.</b> _____
	:	
<b>v.</b>	:	<b>DATE FILED:</b> _____
	:	
<b>GARDEN STATE TOBACCO CO.,</b>	:	<b>VIOLATIONS:     49 U.S.C. § 5124</b>
<b>d/b/a “H.J. Bailey Co.”</b>	:	<b>(Unlawful transportation of</b>
<b>ALLEN S. ROTH</b>	:	<b>hazardous materials - 1 count)</b>

**I N F O R M A T I O N**

**COUNT ONE**

**(Unlawful Transportation of Hazardous Materials)**

**THE UNITED STATES ATTORNEY CHARGES THAT:**

At all times material to this Information:

**A.     The Defendants**

1.       Defendant GARDEN STATE TOBACCO COMPANY, which also conducts business as "H.J. Bailey Company," is a privately-held New Jersey corporation located at 1105 Green Grove Road in Neptune, New Jersey and has been in business since approximately 1934.

2.       Defendant GARDEN STATE TOBACCO COMPANY (d/b/a “H.J. Bailey Company”) sells a variety of smoking related products to its customers throughout the United States, including butane gas canisters, strike matches and Zippo brand lighters, and ships these products to its customers by using ground transportation services such as Federal Express ("FedEx") and United Parcel Service ("UPS").

3. Defendant GARDEN STATE TOBACCO COMPANY (d/b/a “H.J. Bailey Company”) is one of the largest distributors of Zippo brand lighters in the United States and is a significant U.S. distributor of tobacco and tobacco related products, with total annual sales of more than \$35 million.

4. Defendant ALLEN S. ROTH was the chief operating officer of defendant GARDEN STATE TOBACCO COMPANY (d/b/a “H.J. Bailey Company”) with responsibility for the daily management of the company’s operations, including sales, customer service, and the shipment of the company’s products to its customers. Defendant ROTH has been employed by defendant GARDEN STATE TOBACCO COMPANY since 1976.

**B. Regulations Applicable to the Transportation of Hazardous Materials**

5. The Research and Special Programs Administration of the U.S. Department of Transportation issues regulations concerning all transportation modes of hazardous materials. These regulations are set forth in Title 49, Code of Federal Regulations, Sections 171 through 180 (the "Hazardous Materials Regulations").

6. Hazardous material is defined in Title 49, Code of Federal Regulations, Section 171.8 as “a substance or material which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated.”

7. The Hazardous Materials Regulations include requirements concerning the methods, materials, practices, procedures and methodology that must be followed and utilized to ensure the safe transport of materials, which by virtue of their chemical makeup, pose a hazard to individuals and property, including commercial carriers which transport hazardous materials.

8. The Hazardous Materials Regulations regulate all persons who offer hazardous materials for interstate, foreign, and intrastate commerce and require, among other things, that any person who offers hazardous materials for transportation must declare that the materials are hazardous and ensure that the hazardous shipment is properly classified, documented, described, packaged, marked, and labeled in accordance with the regulations.

9. Title 49, Code of Federal Regulations, Section 172.101, Hazardous Materials Table, identifies more than 2700 specific hazardous materials and requires that each shipper determine the proper shipping name.

10. The Hazardous Materials Table designates torch lighters as a compressed gas hazardous material, UN number 1057, strike matches as a flammable solid, UN number 1944, and butane gas canisters as flammable gas regulated receptacles, UN number 2037.

11. Under Title 49, Code of Federal Regulations, Part 172, Subpart C, “Shipping Papers,” each person who offers a hazardous material for transportation must describe that hazardous material by the proper shipping name, hazard class or division, identification number, packaging group and the total quantity on certified shipping papers.

12. Title 49, Code of Federal Regulations, Part 172, Subpart D, “Markings,” specifies marking requirements for hazardous materials and packaging and includes a requirement that the hazardous materials being shipped be properly identified.

13. In addition to marking a package containing a hazardous material, the shipper must also label it with the label specified for the material in the Hazardous Materials Table in a specified location on the package. *See* 49 C.F.R. § 172.400 (general labeling requirement); 49

C.F.R. § 172.406 (placement). The label identifies a broader category of hazard to which the material belongs, *e.g.* corrosive, explosive, poison, etc.

14. Under Title 49, Code of Federal Regulations, Section 172.702, an employer who uses one or more of its employees in connection with causing hazardous materials to be transported or shipped in commerce and directly affects hazardous materials transportation safety must ensure that each such employee is trained in accordance with the requirements in these regulations and such employees may not load, unload or handle hazardous material, prepare hazardous material for transportation, or be responsible for the safety of such transportation unless so trained.

15. It is the duty of every such employer to comply with the applicable requirements for training and to instruct each such employee in relation to those requirements. The employer must ensure that such employees are tested by appropriate means on the subjects covered in 49 C.F.R. § 172.704 and must ensure that each such employee receives recurrent training every three years.

16. Title 49, United States Code, Section 5110 requires that “[e]ach person offering for transportation in commerce hazardous material to which the shipping paper requirements of the Secretary of Transportation apply shall provide to the carrier providing the transportation a shipping paper that makes the disclosures the Secretary prescribes ...,” which includes descriptions of the hazardous material and its hazard classification, and telephone numbers to contact for handling information and in case of an emergency.

17. Properly declared, properly marked, and properly labeled dangerous goods communicate critical information to (a) cargo personnel loading the material on motor carriers, (b) the driver, and (c) emergency personnel responding to an accident.

18. Hazardous material declarations inform motor carrier personnel how to load the materials, how to segregate the materials, and at what temperatures to stow the materials. Temperature sensitive hazardous materials include flammable gases and flammable solids. In addition, flammable gases and solids must travel separately from other hazardous materials, such as corrosives. Flammable solids are readily combustible solids that may cause fire through friction. Therefore, proper packaging is imperative.

19. FedEx and UPS are freight carriers registered by the Federal Motor Carrier Safety Administration (FMCSA), an agency of the U.S. Department of Transportation. Therefore, each must abide by all applicable U.S. Department of Transportation regulations including the FMCSA Regulations and Hazardous Material Regulations.

20. FedEx supplies to its shipping customers a service guide with several pages devoted to "dangerous goods" that state that items such as flammable gases, strike matches and torch lighters are subject to the Hazardous Materials Regulations and warns of criminal penalties associated with shipping hazardous materials without fully complying with these regulations. FedEx provides a toll-free number to its customers who have any questions concerning the shipment of hazardous materials.

21. United Parcel Service also provides to its customers a service guide containing specific information and requirements concerning the transportation of hazardous materials, and

provides a toll-free number for its customers to contact its “UPS Hazardous Materials Center” with any questions regarding the transportation of hazardous materials.

**C. Defendants Did Not Comply with Any of the Hazardous Materials Regulations**

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22. Prior to January 1, 2000, defendant ALLEN S. ROTH became aware that the U.S. Department of Transportation has specific regulations concerning the transportation of hazardous materials in commerce and, through his dealings with FedEx and UPS, learned that these commercial carriers impose additional fees of approximately \$20 per shipment for packages containing hazardous materials.

23. Despite his knowledge that the Hazardous Materials Regulations impose special requirements concerning the transportation of hazardous materials, defendant ALLEN S. ROTH decided, on behalf of defendant GARDEN STATE TOBACCO COMPANY (d/b/a “H.J. Bailey Company”), to not comply with the regulations in part as a cost saving measure.

24. As a result of this decision, defendants GARDEN STATE TOBACCO COMPANY (d/b/a “H.J. Bailey Company”) and ALLEN S. ROTH failed to train any of the company’s employees in the proper identification, marking, labeling and packaging of hazardous materials.

25. During the period from on or about January 1, 2000 through on or about August 27, 2003, defendants ALLEN S. ROTH and GARDEN STATE TOBACCO COMPANY (d/b/a “H.J. Bailey Company”) willfully caused approximately 10,000 shipments of hazardous materials, including butane gas canisters, torch lighters, and strike matches, from its location in New Jersey to destinations throughout the United States, including numerous shipments to

locations in the Eastern District of Pennsylvania, in violation of the Hazardous Materials Regulations.

26. On or about May 8, 2003, in the District of New Jersey and in the Eastern District of Pennsylvania, defendants

**GARDEN STATE TOBACCO COMPANY, INC.,  
d/b/a “H.J. Bailey Company,” and  
ALLEN S. ROTH**

willfully transported and caused to be transported in commerce by United Parcel Service ground transportation from Neptune, New Jersey to Paoli, Pennsylvania hazardous material, that is, butane gas canisters and strike matches (Invoice No. 162988; Customer No. 13407), in violation of the rules and regulations prescribed by the U.S. Department of Transportation, as set forth in Title 49, Code of Federal Regulations, Sections 172.200 through 172.420 and 172.700 through 172.704.

In violation of Title 49, United States Code, Section 5124 and Title 49, Code of Federal Regulations, Section 107.333.

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**PATRICK L. MEEHAN**  
**United States Attorney**